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Filing date: **07/15/2014**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91216725
Party	Defendant Oletu, Godswill H.
Correspondence Address	OLETU, GODSWILL H. OLETU, GODSWILL H. 370 W PLEASANTVIEW AVE STE 2-120 HACKENSACK, NJ 07601-8004 oletu@oletu.com
Submission	Answer
Filer's Name	Godswill Oletu
Filer's e-mail	oletu@oletu.com
Signature	/1gho2kome3/
Date	07/15/2014
Attachments	Applicant Answer - Notice of Opposition 91216725.pdf(54734 bytes) Applicant Pending Application 86228203 - Status Page.pdf(21358 bytes) Applicant Pending Application 86228203 - Office Notice.pdf(214229 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Trademark Application Serial
No. 86067598 Published in the Official Gazette
April 8, 2014.

ZENITH-MART INC.,

Opposer,

v.

OLETU, GODSWILL H.

Applicant.

Opposition No.
91216725

ANSWER AND AFFIRMATIVE DEFENSES TO NOTICE OF OPPOSITION

Applicant; Oletu, Godswill H. using the mark ZENITHMART in commerce as a sole proprietorship, and also under OLETU Systems LLC (a Delaware registered company) & also under STANCE Technology Solutions Inc (a New Jersey registered Company); for its Answer, Additional and Affirmative Defenses to the Notice of Opposition filed by Zenith-Mart Inc. (“Zenith-Mart) against application for registration of Applicant's trademark ZENITHMART, Serial No. 86/067,598 filed September 21, 2013, and published in the Official Gazette on April 8, 2014 (the “Mark”), avers as follows:

ANSWER

1. Applicant admits allegations of this paragraph. ¶ 1
2. Applicant denies each and every allegations of this paragraph. ¶ 2
3. Applicant admits allegations of this paragraph. ¶ 3

4. Applicant lacks knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies each and every one of them. ¶ 4

5. Applicant denies each and every allegations of this paragraph. ¶ 5

6. Applicant denies each and every allegations of this paragraph. ¶ 6

7. Applicant denies each and every allegations of this paragraph. ¶ 7

8. Applicant admits to filing the said Application for the ZENITHMART Mark. Applicant further admits to using the said mark in interstate commerce and to the extent that Paragraph ¶ 8 states a legal conclusion as to Opposer's rights in the mark, no answer is required. Applicant further denies any and all allegations not admitted to herein in reference to this paragraph. ¶ 8

9. Applicant denies each and every allegations of this paragraph. ¶ 9

10. Applicant admits allegations of this paragraph. ¶ 10

11. Applicant lacks knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies each and every one of them. ¶ 11

12. Applicant denies any and all alleged implied damages to Opposer and as to the other allegations contained in this paragraph, Applicant lacks knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies each and every one of them. ¶ 12

13. Applicant denies any and all alleged implication of damages or injuries to Opposer and as to the other allegations contained in this paragraph, Applicant lacks knowledge

or information sufficient to form a belief as to the truth of these allegations and therefore denies each and every one of them. ¶ 13

14. Applicant denies any alleged implied damage or injury to Opposer and to the extent that paragraph ¶ 14 states a legal conclusion as to Applicant's right, no answer is required. Applicant further denies all and any allegations not admitted to herein in reference to this paragraph. ¶ 14

15. Applicant admits only that Opposer contacted Applicant around August, 2013, regarding Applicant's domain name www.zenithmart.com. Applicant further admits that, the said contact and all other subsequent communications with Opposer, were strictly limited to only the said domain name, its ownership and Opposer's desire to buy the said domain name, which proposal Applicant rejected. Applicant further denies all and any allegations not admitted to herein in reference to this paragraph. ¶ 15

16. Applicant denies each and every allegations of this paragraph. ¶ 16

17. Applicant denies each and every allegations of this paragraph. ¶ 17

18. Applicant admits only the portion, regarding the ex-party action by the Examining Attorney, which was corrected within 24 hours. Applicant denies all and any allegations not admitted to herein in reference to this paragraph. ¶ 18

19. Applicant denies each and every allegations of this paragraph. ¶ 19

20. Applicant denies each and every allegations of this paragraph. ¶ 20

21. Applicant denies each and every allegations of this paragraph. ¶ 21

22. Applicant denies each and every allegations of this paragraph. ¶ 22

23. Applicant denies each and every allegations of this paragraph. ¶ 23

24. Applicant denies each and every allegations of this paragraph. ¶ 24

Applicant further denies all and any allegations not specifically, actually or constructively admitted to, in the foregoing paragraphs of his Answer.

AFFIRMATIVE DEFENSES

Further to answering the Notice of Opposition and as Affirmative Defenses thereto, Applicant alleges and asserts the following defenses. In addition to the defenses described below, Applicant hereby incorporates all facts alleged in its Answer to the Notice of Opposition into its Affirmative Defenses. Applicant specifically reserves all rights to allege additional defenses that become known through the course of discovery.

First:- Affirmative Defense:

Applicant currently have a pending application for registration of the word mark ZENITHMART (Serial No: 86/228,203) for use in connection with his Online retail store services. The services covered by this Application are: "On-line retail store services featuring a variety of goods and consumer goods of others, consisting of electronics, office products and accessories, home and garden goods, sporting and outdoor goods, software, applications, jewelry, books, ebooks, publications, laptops, computers, bags, handbags, video games, music, movies, appliances, photo, gifts, gift cards, automotive parts, security and surveillance systems,

GPS systems, navigation, cosmetics, decors and decorations, arts and craft, toys, electrical products, shoes, clothing, lighting products, tools, furniture, household essentials, apparel, entertainment products, personal care products, musical instruments, office supplies, hardware, patio products, lawn care products, landscaping products, grilling products, home improvement products, pet products, fitness products, home decor, beauty and health products."

Attached hereto is the USPTO Status page and Office Notice printouts of this pending application, showing current status, owner and title of Application. Applicant request that this Application, its services and any resultant registration be made part of the records of this proceeding.

Mark in Applicant's Applications (Serial Nos. 86/067,598 & 86/228,203) are hereby referred to as (Applicant's Mark) and the services covered by both Applications are hereby referred to as (Applicant's Services).

Second:- Affirmative Defense:

On information and belief, Applicant's pending Application for online retail services (Serial No: 86/228,203) will be refused registration and suspended by the Examining Attorney, due to the prior filed Applications (Serial Nos: 86/156,478 & 86/172,398) for Opposer.

Third:- Affirmative Defense:

Applicant is damaged by Opposer's current Applications as they are cited as possible bars to the registration of his Application for On-line retail store services and Applicant will be damaged by the registration of Opposer's Applications (Serial Nos: 86/156,478 & 86/172,398).

Fourth:- Affirmative Defense:

The use or registration of Opposer's Mark is likely to cause confusion with Applicant's Mark and Applicant Services as represented on both of Applicant's Applications.

Fifth:- Affirmative Defense:

Based on Opposer's filing dates and alleged first use in commerce dates on both Applications that form the bases for this Opposition, compared to Applicant's first Application's filing date and first use in commerce dates on both Applicant's Applications; Opposer is a junior user and a later filer of an unregistered Mark, While Applicant is the Senior user and first filer.

Sixth:- Affirmative Defense:

At least, earlier than December 20, 2006; Applicant adopted the ZENITHMART mark name in connection with Applicant Services and on December 20, 2006; Applicant made his first US interstate commerce sales using the ZENITHMART mark to a customer in Syracuse New York (Opposer's home State). Applicant has continuously used and currently uses the ZENITHMART mark in US interstate and international commerce in connection with Applicant's Services. Applicant's first use date is earlier than Opposer's alleged first use date and any other date(s) that Opposer can rely upon. Subsequently, priority is not an issue in this proceeding, as Applicant clearly has priority to use the mark on Applicant Services as represented in Applicant's Applications (Serial Nos. 86/067,598 & 86/228,203).

Seventh:- Affirmative Defense:

Applicant has and continues to use its ZENITHMART Mark in interstate and international commerce in connections with Applicant Services and such past, current and continual interstate and international commerce use, are not limited to the domain name www.zenithmart.com as averred by the Opposer. Such usage as asserted here above, also extends to domain name www.zenithmart.net, eBay Seller Online Store, Amazon Affiliate Seller Online Store, Amazon Central Seller Online Store, Paypal Payment System, Microsoft Payment System, Various Online Advertisements, domain hosting, etc.

Eighth:- Affirmative Defense:

Applicant's mark should be given broad scope of protection based on its inherent distinctiveness to Applicant Services and priority of use.

Ninth:- Affirmative Defense:

The Mark ZENITHMART is not distinctive of Opposer's alleged services. In September 16, 2013, Opposer in response to Applicant's query regarding his two allegedly owned websites; www.zenith-mart.com & www.zenithmart.us and why they were parked, not used and no activity on both websites, which are the alleged source identifiers of his services; wrote."...(sic) My old website was www.zenith-mart.com...(sic)..why its not live now was because I cancelled my services with my shopping cart software provider...(sic)...their shopping cart software is messed up. Their html codes are messed up that you find it hard ranking on the search engines for organic search traffic...(sic)...they were a lots of issues that I had to cancel it...(sic)...This is a start up business which am seeking for an SBA loan of \$85,000 to execute my business

plan...(sic)...We haven't recorded any profits yet as we just started..(sic)". To this end, Opposer admitted that he was not operating any ecommerce services on both www.zenith-mart.com and www.zenithmart.us as at September 16, 2013. Opposer further admitted that he has not made any profit since he allegedly started operating his alleged ecommerce services. Opposer further admitted that his, is a start up business, that just started and that he has not executed his business plan, as he is seeking an SBA loan to do that.

Tenth:- Affirmative Defense:

The ZENITHMART mark is not well-known. As at September 16, 2013, Opposer's was a startup business, which "...just started..." and as at the end of last quarter of 2013, Opposer has not executed his business plan and the two websites that Opposer alleged to be the source identification of its services allegedly rendered under the ZENITHMART mark were parked, inactive and not operational.

Eleventh:- Affirmative Defense:

Opposer does not and has never used Opposer's ZENITHMART mark in connection with Opposer's services as stipulated on the two pleaded Applications that formed Opposer's bases for this opposition and as such Opposer's signed declarations before the USPTO were knowingly and patently false and misleading.

Twelfth:- Affirmative Defense:

Opposer was not using Opposer's ZENITHMART mark on or in connection with Opposer's Services at the time of filing of Opposer's Section 1(a) Applications on January 2, 2014 and January 22, 2014 and therefore Opposer's Applications were knowingly false, misleading and therefore void ab initio.

Thirteenth:- Affirmative Defense:

The first use dates cited on both of Opposer's Applications are false. Opposer therefore deceived the USPTO in his Applications, regarding his alleged first use date in connection with Opposer's Services, therefore Opposer declarations before the USPTO were knowing, inaccurate, misleading and patently false.

Fourteenth:- Affirmative Defense:

To the extent Opposer ever claimed to have made any use of Opposer's ZENITHMART Mark, such alleged use were and are not in connection with Opposer's Services.

Fifteenth:- Affirmative Defense:

To the extent Opposer ever claimed to have made any use of Opposer's ZENITHMART Mark, such alleged use were and are not in connection with interstate commerce.

Sixteenth:- Affirmative Defense:

Opposer has misused the federal registration designation with intent to deceive the purchasing public or others in the trade into believing that the ZENITHMART Mark is registered.

Seventeenth:- Affirmative Defense:

Opposer's Applications (Serial Nos: 86/156,478 & 86/172,398) are void ab initio on fraud. Opposer's Applications were made in bad faith and made with knowingly false material misrepresentation to the USPTO, regarding Opposer's Services and with knowledge of Applicant's prior use and prior rights in the mark at the time of both Opposer's Applications and further made knowingly false material misrepresentation as to the date of first use in commerce in connection with Opposer's services.

Eighteenth:- Affirmative Defense:

Opposer lacks standing to bring this Opposition or lack standing sufficient to substance this Opposition in that, his two pleaded Applications relied upon for standing are defective and void ad initio.

WHEREFORE, Applicant prays as follows:

1. Applicant's pending Application (Serial No. 86/228,203) be made part of the records for this proceeding.
2. Judgment, that Applicant has Priority over Opposer to use ZENITHMART Mark.
3. Opposer's Opposition be dismissed with prejudice.
5. That registration for the mark ZENITHMART on Application (Serial No: 86/067,598) be issued to the Applicant.
6. Judgment, that Applicant has Priority over both Opposer's Applications cited as possible bars to the registration of Applicant's Application for On-line retail store services (Serial No: 86/228,203).

Dated: July 15, 2014

Respectfully Submitted,

Signed: /lgho2kome3/

Oletu, Godswill H. (Applicant, pro-se)

/d/b/a Zenithmart

370 W. Pleasantview Avenue, STE#2-120

Hackensack NJ 07054.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 15th day of July, 2014, a true copy of the foregoing ANSWER AND AFFIRMATIVE DEFENSES TO NOTICE OF OPPOSITION, was served upon Opposer's attorney of record by first class mail, postage prepaid and addressed to:

Adam S. Weiss
Polsinelli
161 N. Clark Street, Suite 4200
Chicago, IL 60601-3316

Signed: /1gho2kome3/
Oletu, Godswill H. (Applicant, pro-se.)
/d/b/a Zenithmart
370W.Pleasantview Avenue, STE#2-120
Hackensack NJ 07054.

CERTIFICATE OF ELECTRONIC FILING

The undersigned certifies that this submission is being filed with the United States Patent and Trademark Office via the Electronic System for Trademark Trials and Appeals (ESTTA) on this 15th day of July, 2014.

Signed: /1gho2kome3/
Oletu, Godswill H. (Applicant, pro-se.)
/d/b/a Zenithmart
370 W. Pleasantview Avenue, STE#2-120
Hackensack NJ 07054.

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Mark: ZENITHMART

ZENITHMART

US Serial Number: 86228203

Application Filing Date: Mar. 21, 2014

Filed as TEAS Plus: Yes

Currently TEAS Plus: Yes

Register: Principal

Mark Type: Service Mark

Status: Applicant's response to a non-final Office action has been entered. The application is being returned to the examining attorney for further review. To view all documents in this file, click on the Trademark Document Retrieval link at the top of this page.

Status Date: Jun. 27, 2014

Mark Information

Mark Literal Elements: ZENITHMART

Standard Character Claim: Yes. The mark consists of standard characters without claim to any particular font style, size, or color.

Mark Drawing Type: 4 - STANDARD CHARACTER MARK

Goods and Services

Note: The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis ((...)) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks *..* identify additional (new) wording in the goods/services.

For: On-line retail store services featuring a variety of goods and consumer goods of others, consisting of electronics, office products and accessories, home and garden goods, sporting and outdoor goods, software, applications, jewelry, books, ebooks, publications, laptops, computers, bags, handbags, video games, music, movies, appliances, photo, gifts, gift cards, automotive parts, security and surveillance systems, GPS systems, navigation, cosmetics, decors and decorations, arts and craft, toys, electrical products, shoes, clothing, lighting products, tools, furniture, household essentials, apparel, entertainment products, personal care products, musical instruments, office supplies, hardware, patio products, lawn care products, landscaping products, grilling products, home improvement products, pet products, fitness products, home decor, beauty and health products

International Class(es): 035 - Primary Class

U.S Class(es): 100, 101, 102

Class Status: ACTIVE

Basis: 1(a)

First Use: 2008

Use in Commerce: 2008

Basis Information (Case Level)

Filed Use: Yes

Currently Use: Yes

Amended Use: No

Filed ITU: No

Currently ITU: No

Amended ITU: No

Filed 44D: No

Currently 44D: No

Amended 44D: No

Filed 44E: No

Currently 44E: No

Amended 44E: No

Filed 66A: No

Currently 66A: No

Filed No Basis: No

Currently No Basis: No

Current Owner(s) Information

Owner Name: OLETU, GODSWILL HOSEA

DBA, AKA, Formerly: DBA ZENITHMART

Composed of: OLETU, GODSWILL HOSEA; UNITED STATES CITIZEN.

Owner Address: SUITE 2-120
370 W. Pleasantview Avenue
Hackensack, NEW JERSEY 07601
UNITED STATES

Legal Entity Type: SOLE PROPRIETORSHIP

**State or Country Where
Organized:** NEW JERSEY

Attorney/Correspondence Information

Attorney of Record - None

Correspondent

Correspondent Name/Address: OLETU, GODSWILL HOSEA
OLETU, GODSWILL HOSEA
370 W PLEASANTVIEW AVE STE 2-120
HACKENSACK, NEW JERSEY 07601-8004
UNITED STATES

Phone: (201)286-1352

Correspondent e-mail: OLETU@OLETU.COM

Correspondent e-mail Authorized: Yes

Domestic Representative - Not Found**Prosecution History**

Date	Description	Proceeding Number
Jun. 27, 2014	TEAS/EMAIL CORRESPONDENCE ENTERED	88889
Jun. 27, 2014	CORRESPONDENCE RECEIVED IN LAW OFFICE	88889
Jun. 27, 2014	TEAS RESPONSE TO OFFICE ACTION RECEIVED	
Jun. 26, 2014	NOTIFICATION OF NON-FINAL ACTION E-MAILED	6325
Jun. 26, 2014	NON-FINAL ACTION E-MAILED	6325
Jun. 26, 2014	NON-FINAL ACTION WRITTEN	90334
Jun. 24, 2014	ASSIGNED TO EXAMINER	90334
Apr. 05, 2014	NOTICE OF PSEUDO MARK E-MAILED	
Apr. 04, 2014	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	
Mar. 25, 2014	NEW APPLICATION ENTERED IN TRAM	

TM Staff and Location Information**TM Staff Information**

TM Attorney: ALESKOW, DAVID HOWARD

Law Office Assigned: LAW OFFICE 105

File Location

Current Location: TMEG LAW OFFICE 105 - EXAMINING
ATTORNEY ASSIGNED

Date in Location: Jun. 26, 2014

To: OLETU, GODSWILL HOSEA (OLETU@OLETU.COM)
Subject: U.S. TRADEMARK APPLICATION NO. 86228203 - ZENITHMART - N/A
Sent: 6/26/2014 4:22:24 PM
Sent As: ECOM105@USPTO.GOV
Attachments: [Attachment - 1](#)
[Attachment - 2](#)
[Attachment - 3](#)
[Attachment - 4](#)

**UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)
OFFICE ACTION (OFFICIAL LETTER) ABOUT APPLICANT'S TRADEMARK APPLICATION**

U.S. APPLICATION SERIAL NO. 86228203

MARK: ZENITHMART

86228203

CORRESPONDENT ADDRESS:

OLETU, GODSWILL HOSEA
OLETU, GODSWILL HOSEA
370 W PLEASANTVIEW AVE STE 2-120
HACKENSACK, NJ 07601-8004

CLICK HERE TO RESPOND TO
<http://www.uspto.gov/trademarks/teas/r>

APPLICANT: OLETU, GODSWILL HOSEA

CORRESPONDENT'S REFERENCE/DOCKET NO :

N/A

CORRESPONDENT E-MAIL ADDRESS:

OLETU@OLETU.COM

OFFICE ACTION

STRICT DEADLINE TO RESPOND TO THIS LETTER

TO AVOID ABANDONMENT OF APPLICANT'S TRADEMARK APPLICATION, THE USPTO MUST RECEIVE APPLICANT'S COMPLETE RESPONSE TO THIS LETTER **WITHIN 6 MONTHS** OF THE ISSUE/MAILING DATE BELOW.

ISSUE/MAILING DATE: 6/26/2014

The referenced application has been reviewed by the assigned trademark examining attorney. Applicant must respond timely and completely to the issue(s) below. 15 U.S.C. §1062(b); 37 C.F.R. §§2.62(a), 2.65(a); TMEP §§711, 718.03.

SUMMARY OF ISSUES that applicant must address:

- IDENTIFICATION OF SERVICES

SEARCH OF OFFICE'S DATABASE OF MARKS

The trademark examining attorney has searched the USPTO's database of registered and pending marks and has found no similar registered marks that would bar registration under Trademark Act Section 2(d). TMEP §704.02; *see* 15 U.S.C. §1052(d). However, marks in prior-filed pending applications may present a bar to registration of applicant's mark.

ADVISORY: PRIOR-FILED APPLICATIONS

The filing dates of pending U.S. Application Serial Nos. 86156478 and 86172398 precede applicant's filing date. See attached referenced applications. If one or more of the marks in the referenced applications register, applicant's mark may be refused registration under Trademark Act Section 2(d) because of a likelihood of confusion with the registered mark(s). *See* 15 U.S.C. §1052(d); 37 C.F.R. §2.83; TMEP §§1208 *et seq.* Therefore, upon receipt of applicant's response to this Office action, action on this application may be suspended pending final disposition of the earlier-filed referenced applications.

In response to this Office action, applicant may present arguments in support of registration by addressing the issue of the potential conflict between applicant's mark and the marks in the referenced applications. Applicant's election not to submit arguments at this time in no way limits applicant's right to address this issue later if a refusal under Section 2(d) issues.

IDENTIFICATION OF SERVICES

An application must specify, in an explicit manner, the particular goods or services on or in connection with which the applicant uses, or has a bona fide intention to use, the mark in commerce. *See* 15 U.S.C. §1051(a)(2), (b)(2); 37 C.F.R. §2.32(a)(6); TMEP §1402.01. Therefore, proper punctuation in identifications of goods and services is necessary to delineate explicitly each product or service within a list and to avoid ambiguity. Generally, **commas** should be used (1) to separate a series of related items identified within a particular category of goods or services, (2) before and after "namely," and (3) between each item in a list of goods or services following "namely." TMEP §1402.01(a). **Semicolons** generally should be used to separate a series of distinct categories of goods or services within an international class. *Id.*

For example, the identification of goods "cleaners, namely, glass cleaners, deodorizers for pets, cosmetics" is ambiguous because "cosmetics" and "deodorizers for pets" are not "cleaners," and thus are not within this category of goods even though they are all in the same international class. *Id.* However, by replacing the commas with semicolons after "glass cleaners" and "deodorizers for pets," this identification would become acceptable: "cleaners, namely, glass cleaners; deodorizers for pets; cosmetics." *Id.*

Applicant may adopt the following identification of services, if accurate:

International Class 35: On-line retail store services featuring a variety of goods and consumer goods of others, consisting of electronics, office products and accessories, home and garden goods, sporting and outdoor goods, software, applications, jewelry, books, ebooks, publications, laptops, computers, bags, handbags, video games, music, movies, appliances, photo, gifts, gift cards, automotive parts, security and surveillance systems, GPS systems, navigation, cosmetics, decors and decorations, arts and craft, toys,

electrical products, shoes, clothing, lighting products, tools, furniture, household essentials, apparel, entertainment, personal care products, musical instruments, office supplies, hardware, patio, garden, lawn care, landscaping products, grilling products, home improvement products, pet products, fitness, indoor and outdoor furniture, home decor, beauty and health products

See TMEP §1402.01.

An applicant may only amend an identification to clarify or limit the services, but not to add to or broaden the scope of the services. 37 C.F.R. §2.71(a); *see* TMEP §§1402.06 *et seq.*, 1402.07.

For assistance with identifying and classifying goods and services in trademark applications, please see the USPTO's online searchable *U.S. Acceptable Identification of Goods and Services Manual* at <http://tess2.uspto.gov/netahtml/tidm.html>. *See* TMEP §1402.04.

RESPONSE GUIDELINES

For this application to proceed toward registration, applicant must explicitly address each refusal and/or requirement raised in this Office action. If the action includes a refusal, applicant may provide arguments and/or evidence as to why the refusal should be withdrawn and the mark should register. Applicant may also have other options for responding to a refusal and should consider such options carefully. To respond to requirements and certain refusal response options, applicant should set forth in writing the required changes or statements.

If applicant does not respond to this Office action within six months of the issue/ mailing date, or responds by expressly abandoning the application, the application process will end, the trademark will fail to register, and the application fee will not be refunded. *See* 15 U.S.C. §1062(b); 37 C.F.R. §§2.65(a), 2.68(a), 2.209(a); TMEP §§405.04, 718.01, 718.02. Where the application has been abandoned for failure to respond to an Office action, applicant's only option would be to file a timely petition to revive the application, which, if granted, would allow the application to return to active status. *See* 37 C.F.R. §2.66; TMEP §1714. There is a \$100 fee for such petitions. *See* 37 C.F.R. §§2.6, 2.66(b)(1).

ASSISTANCE

If applicant has questions regarding this Office action, please telephone or e-mail the assigned trademark examining attorney. All relevant e-mail communications will be placed in the official application record; however, an e-mail communication will not be accepted as a response to this Office action and will not extend the deadline for filing a proper response. *See* 37 C.F.R. §2.191; TMEP §§304.01-.02, 709.04-.05. Further, although the trademark examining attorney may provide additional explanation pertaining to the refusal(s) and/or requirement(s) in this Office action, the trademark examining attorney may not provide legal advice or statements about applicant's rights. *See* TMEP §§705.02, 709.06.

TEAS PLUS APPLICANTS – TO MAINTAIN REDUCED FEE, ADDITIONAL REQUIREMENTS MUST BE MET, INCLUDING SUBMITTING DOCUMENTS ONLINE:

Applicants who filed their application online using the lower-fee TEAS Plus application form must (1) continue to submit certain documents online using TEAS, including responses to Office actions (see TMEP §819.02(b) for a complete list of these documents); (2) accept correspondence from the USPTO via e-mail throughout the examination process; and (3) maintain a valid e-mail address. *See* 37 C.F.R. §2.23(a)(1), (a)(2); TMEP §§819, 819.02(a). TEAS Plus applicants who do not meet these three requirements must submit an additional fee of \$50 per international class of goods and/or services. 37

C.F.R. §2.6(a)(1)(iv); TMEP §819.04. However, in certain situations, authorizing an examiner's amendment by telephone will not incur this additional fee.

/David H. Aleskow/
David H. Aleskow
Trademark Examining Attorney
Law Office 105
571-272-7895
David.Aleskow@uspto.gov

TO RESPOND TO THIS LETTER: Go to http://www.uspto.gov/trademarks/teas/response_forms.jsp. Please wait 48-72 hours from the issue/mailling date before using the Trademark Electronic Application System (TEAS), to allow for necessary system updates of the application. For *technical* assistance with online forms, e-mail TEAS@uspto.gov. For questions about the Office action itself, please contact the assigned trademark examining attorney. **E-mail communications will not be accepted as responses to Office actions; therefore, do not respond to this Office action by e-mail.**

All informal e-mail communications relevant to this application will be placed in the official application record.

WHO MUST SIGN THE RESPONSE: It must be personally signed by an individual applicant or someone with legal authority to bind an applicant (i.e., a corporate officer, a general partner, all joint applicants). If an applicant is represented by an attorney, the attorney must sign the response.

PERIODICALLY CHECK THE STATUS OF THE APPLICATION: To ensure that applicant does not miss crucial deadlines or official notices, check the status of the application every three to four months using the Trademark Status and Document Retrieval (TSDR) system at <http://tsdr.uspto.gov/>. Please keep a copy of the TSDR status screen. If the status shows no change for more than six months, contact the Trademark Assistance Center by e-mail at TrademarkAssistanceCenter@uspto.gov or call 1-800-786-9199. For more information on checking status, see <http://www.uspto.gov/trademarks/process/status/>.

TO UPDATE CORRESPONDENCE/E-MAIL ADDRESS: Use the TEAS form at <http://www.uspto.gov/trademarks/teas/correspondence.jsp>.

Print: Jun 26, 2014

86156478

DESIGN MARK

Serial Number

86156478

Status

SUSPENSION LETTER - MAILED

Word Mark

ZENITHMART

Standard Character Mark

Yes

Type of Mark

SERVICE MARK

Register

PRINCIPAL

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Owner

Zenith-Mart Inc CORPORATION NEW YORK Apt C 45 Monroe Street Milford
CONNECTICUT 06460

Goods/Services

Class Status -- ACTIVE. IC 035. US 100 101 102. G & S: On-line
retail store services featuring electronics, computers, jewelry,
shoes, automotive and tools, home appliances, health and beauty
products. First Use: 2012/04/09. First Use In Commerce: 2012/10/21.

Filing Date

2014/01/02

Examining Attorney

BORSUK, ESTHER A.

ZenithMart

DESIGN MARK

Serial Number

86172398

Status

SUSPENSION LETTER - MAILED

Word Mark

ZENITHMART

Standard Character Mark

No

Type of Mark

SERVICE MARK

Register

PRINCIPAL

Mark Drawing Code

(3) DESIGN PLUS WORDS, LETTERS AND/OR NUMBERS

Owner

Zenith-Mart Inc CORPORATION NEW YORK 8th Floor 30 Wall St New York NEW YORK 10005

Goods/Services

Class Status -- ACTIVE. IC 035. US 100 101 102. G & S: On-line retail store services featuring electronics, computers, televisions, home appliances, jewelry, tablet PCs, shoes, automotive and tools, health and beauty products. First Use: 2012/04/09. First Use In Commerce: 2012/10/21.

Description of Mark

The mark consists of a design graphics stylized one word "ZenithMart" with "Z" underlining the "ZenithMart" to the right.

Colors Claimed

Color is not claimed as a feature of the mark.

Filing Date

2014/01/22

Examining Attorney

BORSUK, ESTHER A.

ZENTH-MART

To: OLETU, GODSWILL HOSEA (OLETU@OLETU.COM)
Subject: U.S. TRADEMARK APPLICATION NO. 86228203 - ZENITHMART - N/A
Sent: 6/26/2014 4:22:24 PM
Sent As: ECOM105@USPTO.GOV
Attachments:

UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)

**IMPORTANT NOTICE REGARDING YOUR
U.S. TRADEMARK APPLICATION**

USPTO OFFICE ACTION (OFFICIAL LETTER) HAS ISSUED
ON **6/26/2014** FOR U.S. APPLICATION SERIAL NO. 86228203

Your trademark application has been reviewed. The trademark examining attorney assigned by the USPTO to your application has written an official letter to which you must respond. Please follow these steps:

(1) READ THE LETTER by clicking on this [link](#) or going to <http://tsdr.uspto.gov/>, entering your U.S. application serial number, and clicking on "Documents."

The Office action may not be immediately viewable, to allow for necessary system updates of the application, but will be available within 24 hours of this e-mail notification.

(2) RESPOND WITHIN 6 MONTHS (*or sooner if specified in the Office action*), calculated from **6/26/2014**, using the Trademark Electronic Application System (TEAS) response form located at http://www.uspto.gov/trademarks/teas/response_forms.jsp.

Do NOT hit "Reply" to this e-mail notification, or otherwise e-mail your response because the USPTO does NOT accept e-mails as responses to Office actions.

(3) QUESTIONS about the contents of the Office action itself should be directed to the trademark examining attorney who reviewed your application, identified below.

/David H. Aleskow/
David H. Aleskow
Trademark Examining Attorney
Law Office 105
571-272-7895
David.Aleskow@uspto.gov

WARNING

Failure to file the required response by the applicable response deadline will result in the ABANDONMENT of your application. For more information regarding abandonment, see <http://www.uspto.gov/trademarks/basics/abandon.jsp>.

PRIVATE COMPANY SOLICITATIONS REGARDING YOUR APPLICATION: Private companies **not** associated with the USPTO are using information provided in trademark applications to mail or e-mail trademark-related solicitations. These companies often use names that closely resemble the USPTO and their solicitations may look like an official government document. Many solicitations require that you pay “fees.”

Please carefully review all correspondence you receive regarding this application to make sure that you are responding to an official document from the USPTO rather than a private company solicitation. All official USPTO correspondence will be mailed only from the “United States Patent and Trademark Office” in Alexandria, VA; or sent by e-mail from the domain “@uspto.gov.” For more information on how to handle private company solicitations, see http://www.uspto.gov/trademarks/solicitation_warnings.jsp.